

# Public Document Pack

## Public Accounts Select Committee Supplementary Agenda

Wednesday, 16 March 2016

**7.00 pm**

Committee Room 1

Civic Suite

Lewisham Town Hall

London SE6 4RU

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### Part 1

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Public Accounts Select Committee		
Title	No Recourse to Public Funds Update	
Contributor	Executive Director for Customer Services	Item 4 – supplementary
Class	Part 1 (open)	16 March 2016

## Reasons for lateness and urgency

This report is late due to need to provide the Public Accounts Committee with the most up to date information possible regarding the performance of the service. It is urgent as there is no other occasion for Committee to review the work of the service before the commencement of the new financial year.

## 1 Summary

- 1.1 This report is intended to provide the Public Accounts Committee with an update on the work to manage the caseload of people with no recourse to public funds (NRPF).

## 2 Background

- 2.1 No Recourse to Public Funds (NRPF) refers to people from abroad who are subject to immigration controls and have no entitlement to welfare benefits, public housing or financial support from the Home Office.
- 2.2 Individuals with NRPF, whilst not eligible for public funds, might still be eligible for local authority assistance under:
  - Section 17 of the Children Act 1989, which puts a duty on local authorities to safeguard the welfare of children in their area and to promote their upbringing by their families. To support this, local authorities may provide assistance-in-kind, accommodation and/or cash.
  - The Care Act 2014, but only if the Human Rights Act is engaged. Those subject to immigration control within the meaning of section 115 of the IAA 1999 are now excluded from care and support under the Care Act.
- 2.3 Assistance under these acts is not defined as 'a public fund', hence why individuals with NRPF may be entitled to assistance under these provisions.
- 2.4 Section 17 of the Children Act sets out a general duty upon local authorities to 'safeguard and promote the welfare of children within their area who are in need'. Under the Act, the local authority has a duty to assess families presenting as in need and have the power to provide services to those children

and families which 'may include providing accommodation and giving assistance in kind or in cash'.

In the case of adults, the Care Act 2014 the relevant authority is the one where the adult is either 'ordinarily resident' or where they are present if they have no settled residence. A person is ordinarily resident in the area where they have voluntarily taken up residence for a settled purpose.

In addition, applicants need to show that

- they are genuinely destitute with no other means of support available to them.
  - The thresholds for destitution are high and are defined as not having the means to provide for accommodation or essential living needs.
- they are not excluded from support by Schedule 3 of the Nationality Immigration and Asylum Act 2002.
  - This includes people with refugee status from abroad, a person who has nationality of another EEA state (unless to exclude them would breach their treaty rights), a failed asylum seeker, a person unlawfully present in the UK (if an individual does not have legal status in the UK but is in the process of seeking to regularise their stay, they are not excluded from support). However, authorities can still be compelled to provide services to individuals excluded by virtue of their immigration status where that refusal would be a breach of their human rights.

2.5 For those who meet these criteria, following the completion of the relevant social care assessment, individuals may be provided with accommodation, subsistence and other services assessed as required to meet their needs.

### **3 Policy context**

3.1 The numbers of people with NRPf presenting to the local authority has risen significantly in recent years. This is particularly the case for families. In 2011/12 Lewisham was supporting 23 families, which rose to 178 by November 2013 and 286 by June 2014. The number of active cases being supported by Lewisham as at January 2016 is 185, representing a decrease of between 3 and 4 cases per month since the commencement of the pilot.

3.2 NRPf Connect estimate that as at 31<sup>st</sup> December 2015 there are 2202 households accessing NRPf services across the 35 local authorities that are part of the group. The average cost per case is £16,000 per annum and the current per annum cost of provision for those authorities that are part of NRPf Connect is £34m. These figures may not be fully reflective of the challenges in Lewisham as a number of the authorities that use NRPf Connect are outside of London and as such have reduced costs, and the data capture for NRPf services still requires improvement. As of June 2014 there were 280 cases

being supported in Lambeth, 286 in Lewisham, 189 in Greenwich, 117 in Croydon and 80 in Southwark. By the end of December 2015 there had been some significant changes, with 230 family cases being supported in Greenwich, 200 in Lambeth, 117 in Southwark and 60 in Croydon. There were 183 family cases being supported by Lewisham at the end of December 2015. It should also be noted that Southwark have a significantly higher adult NRPF caseload than other London boroughs

- 3.3 Lewisham's Sustainable Communities Strategy sets out six key priorities for the borough as a whole. This review will contribute to the 'Healthy, active and enjoyable' priority, where people can actively participate in maintaining and improving their health and wellbeing as well as the 'Safer' priority, where people feel safe and live free from crime, antisocial behaviour and abuse.
- 3.4 Factors contributing to recent rises in demand nationally include Home Office policy changes, changes to legislation and case law, the economic downturn and changes to Legal Aid. In common with other local authorities, the number of NRPF families seeking support increased significantly from 2012 onwards. This was the result of a number of factors including a focus on asylum rather than managed migration processes, the re-introduction of the 7 year child concession rule, which allows individuals to apply for stay on the grounds of family life as a parent of child who lived in the UK continuously for seven years and the introduction of minimal financial requirements for those sponsoring people from abroad for the purposes of settlement. Delays in the judicial process for applicants seeking a review of their decision mean the average waiting time for a resolution is 10 months, although many applicants have had to wait substantially longer. Delays at the Home Office have also meant that where code change requests used to take a number of weeks they are now taking between 3 and 4 months. The outcome of the aforementioned delays is that cases are requiring local authority support for longer periods of time.
- 3.5 The Court of Justice of the European Union ruling on the case of Zambrano provided that a non-European Economic Area (EEA) national who had been living and working in Belgium without a work permit, had a right to reside and to work so that his Belgian national children were not forced to leave the European Union (EU) and prevented from exercising their rights as EU citizens. The ruling means that non EEA nationals who are the primary carer of a dependent British child have a right to reside and work if the British child would be otherwise forced to leave, although they do not have entitlement to benefits. This means that more families can request support.
- 3.6 As a result of changing case-law, there are a very limited number of reasons why a local authority can decide not to support presenting individuals such as:
  - In the case of a single adult they are 'ordinarily resident' in another borough
  - Individual or family is receiving support from another local authority
  - The individual or family is not destitute or homeless
  - The applicant is excluded from support because of their immigration status and it would not be a breach of their human rights not to provide a service.

- 3.7 The establishment of the National Asylum Support Service (NASS) in 2000 resulted in the majority of local authorities disbanding their asylum teams. With this, much of the specialist immigration knowledge, which also related to NRPF cases, was lost. NRPF cases became absorbed into routine social work processes where there was neither the expertise nor processes or systems to respond effectively to cases of this type.
- 3.8 The 2013 Standard Civil Contract provides for legal aid (including emergency funding) for Judicial Review challenges in family, immigration and asylum, and public law.

#### **4 Lewisham response**

- 4.1 In November 2013, Lewisham's Executive Management Team commissioned a review of current NRPF processes in Lewisham to identify whether our current approaches to assessing and supporting this group were fit for purpose to ensure the Council was meeting its duties to vulnerable adults and children in need, and enabling applicants to progress to care for themselves and their children within a mainstream environment of independent living. At the time, the review found that there were 223 NRPF cases in children's social care, costing an average of £23,318 per annum, with the total costs for accommodation and subsistence circa £5.2m per annum. Based on the trend at the time it was expected that this could rise to over £8m by December 2015. Research undertaken by the NRPF Network and through interviews with other local authorities detailed in the report 5<sup>th</sup> November 2014 also indicated that the support costs for NRPF in Lewisham were amongst the top third of authorities surveyed, and that the caseload in Lewisham was more extensive than that in many other London Boroughs. In adult social care there were 18 cases at an average cost per case of £13,000 per annum, although there were significant variations depending on case need, resulting in a total cost per annum of £240,000.
- 4.2 The review found that Lewisham did not have a written policy, assessment process or dedicated system for decision making and recording outcomes. The review also found that there was no resolution-focused case management approach and that the separation of functions in housing, adult and children's social care made it more difficult to develop a standard corporate approach. The review also found that there was no resolution-focused case management approach and that the separation of functions in housing, adult and children's social care made it more difficult to develop a standard corporate approach. This meant that once a family was accepted there was little in the way of further involvement or review of eligibility or support for the family and that as a consequence very few cases stopped receiving support each year. This was noted to be in contrast with other councils who reported that 62% of cases were transitioned away from local authority support within 2 years.
- 4.3 In order to address these findings, action was taken to invest £300,000 in setting up a dedicated team to tackle NRPF. This consists of a specialist team of 5 case workers & a Home Office secondee and introduced a pilot approach

in June 2014. The team are also supported by specialist officers in fraud, legal and a small housing procurement team who are responsible for ensuring that the council uses appropriate resources to secure both temporary accommodation and 'more settled' accommodation in the private sector. The team links strongly with child protection officers in Children's Social Care to ensure that any safeguarding concerns are picked up. It should be noted that the significant characteristic of the families presenting for services from a NRPF background is that they are usually self-referring. This means that they present in circumstances separate from the mainstream interagency referral route to children's social care, where background histories and concerns are usually already flagged. This means that there is a heightened requirement upon assessing officers to collect full and accurate detail as to their histories and circumstances, before deciding on appropriate levels of support. The reasons for presentation for services are also usually quite distinct from families subject to interagency referral. NRPF referrals are, by their nature overwhelmingly motivated by economic need. Details of the legal responsibilities of the Council, the assessment approach and the services provided by the NRPF team to NRPF applicants are contained in the Mayor & Cabinet report 13<sup>th</sup> May 2015

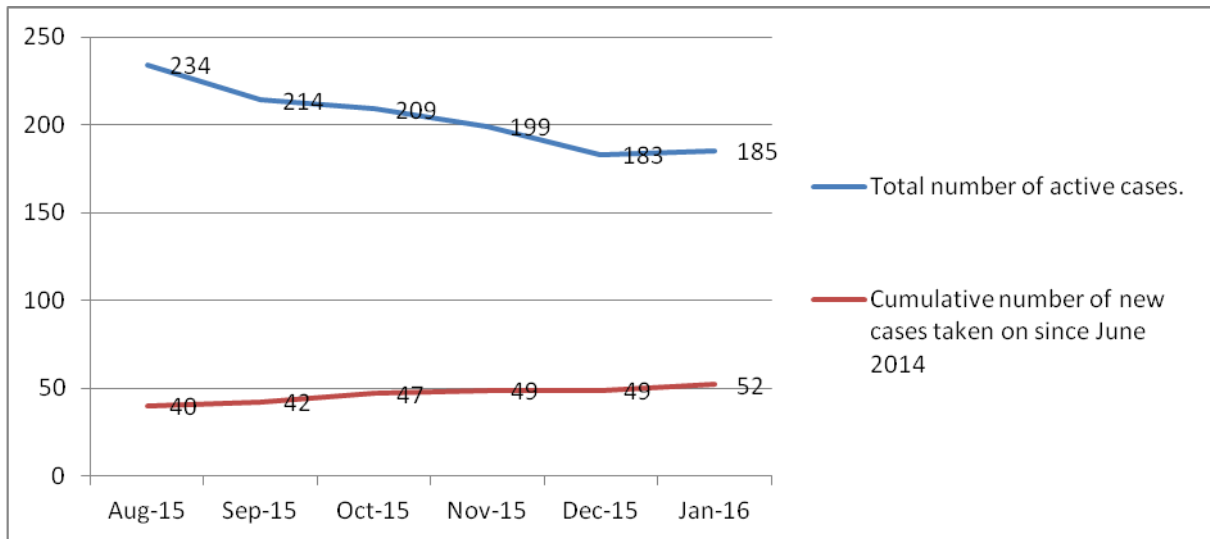
- 4.4 Before the pilot, at least half of all cases presenting were being accepted for support, and continued to receive support well beyond the two-year timeframe reported by other boroughs. In the first two and a half months of the pilot, 96 people presented to the council seeking support with housing and subsistence (approx. 10 per week). Of these a duty to provide support was accepted or was accepted pending the outcome of a full assessment in narrowly over 10% of cases. Between August 2015 and January 2016, 177 new and repeat cases presented to the service (approx. 7 per week). Of these, 13 cases were accepted for support, representing an acceptance rate of slightly over 7%.
- 4.5 The team has established a reassessment process for all cases that were supported prior to the establishment of the NRPF team. To date all but 51 out of 286 cases have been reassessed. 120 cases have been resolved and successfully resettled into private sector tenancies supported either by benefits, applicant earnings or a combination of both. A further 23 pre-pilot cases have been closed as the applicant was no longer eligible for support (for example they had significant levels of undisclosed income).

## **5 Current position**

### Caseload

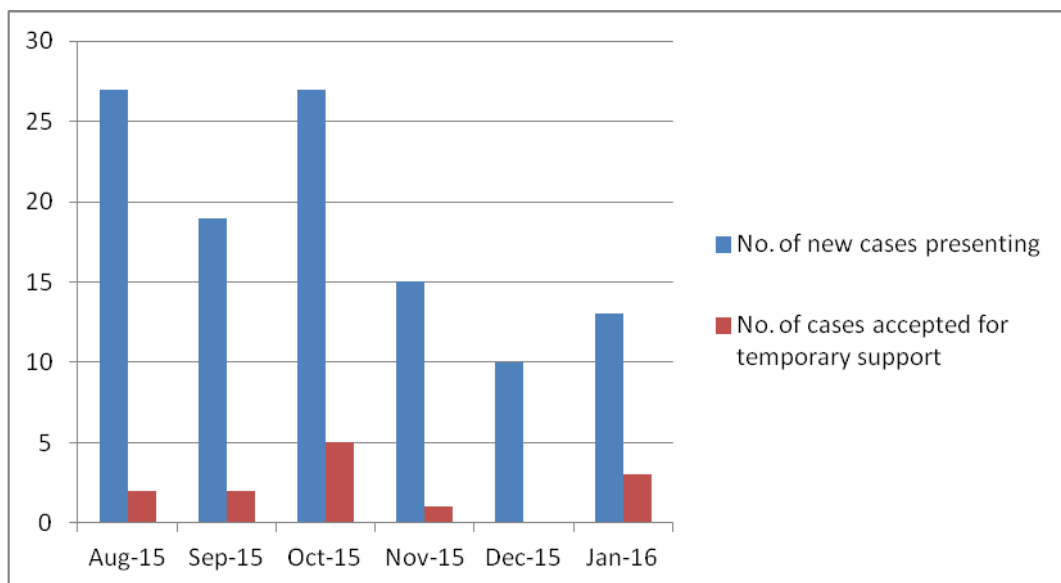
- 5.1 As at January 2016 the team were supporting 185 family cases. This represents a significant reduction from an active caseload of 286 in June 2014. 52 new cases have been accepted since the start of the pilot in June 2014. An average of 2.6 cases have been accepted for support each month since June 2014 and an average of 7.7 cases have been closed per month over the same period. The reduction is a combination of the approach to ensure that only those who meet the eligibility requirements are accepted for support and the pro-active approach to existing caseload resulting in cases being promptly closed where appropriate. However, it is expected that the challenges facing

the service are likely to lead to a significant increase in demand over the next twelve months and this may require the team to review and adapt existing processes to meet any increase in demand appropriately.



### New cases

5.2 177 new and repeat cases have presented to the service between August 2015 and January 2016. 13 cases have been accepted for support over the past 6 months, representing an acceptance rate of slightly over 7%. The decrease in the number of cases being accepted has been a significant factor in reducing the total number of cases being supported as well as the success that the team has had in resolving ongoing cases.



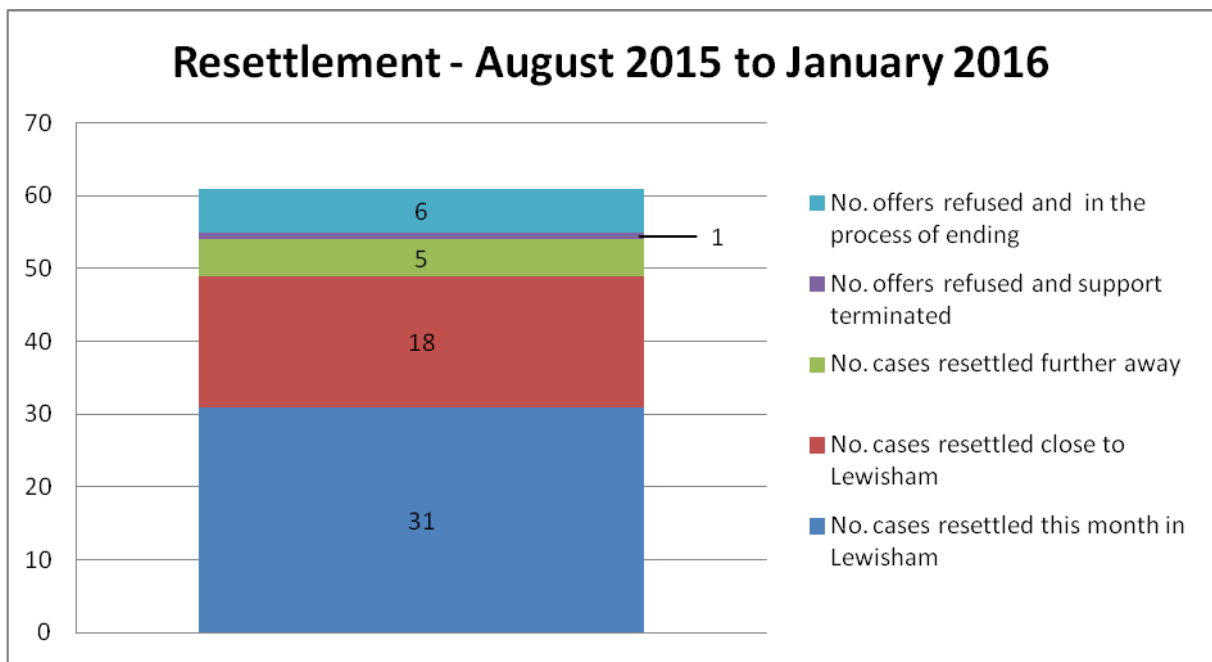
### Resettlement and procurement

5.3 In November 2015, Mayor and Cabinet approved a revised Location Priority

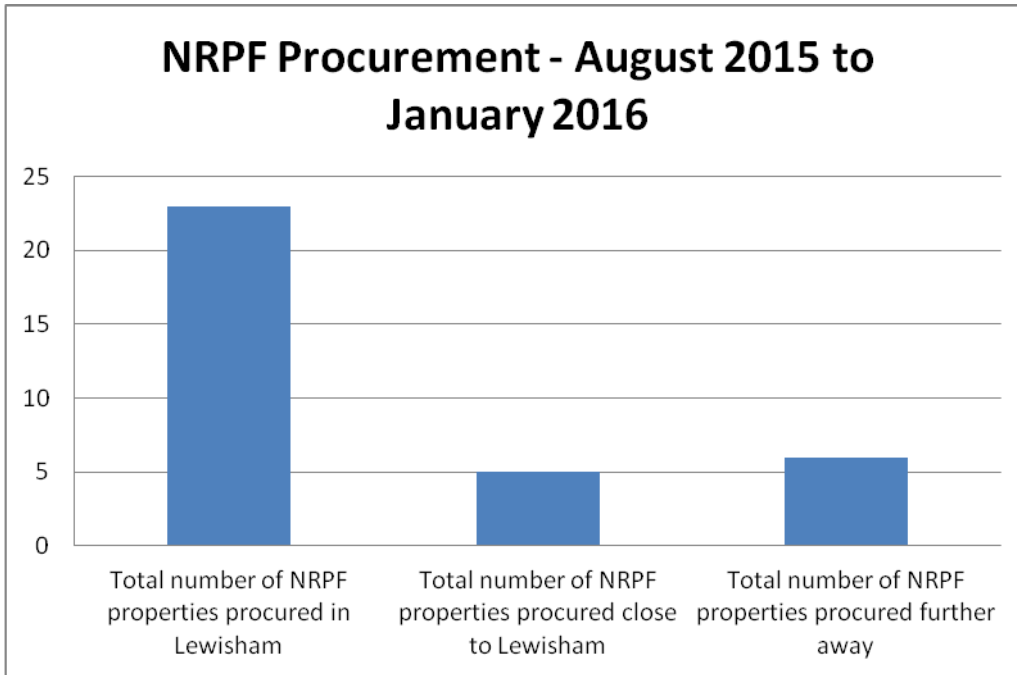


Policy. This policy sets out how the Council will allocate households to the properties it is able to procure in the borough, close to the borough and further away. The policy defines close to the borough as within 90 minutes travel. This policy and its associated operating procedures are used when assessing cases for resettlement.

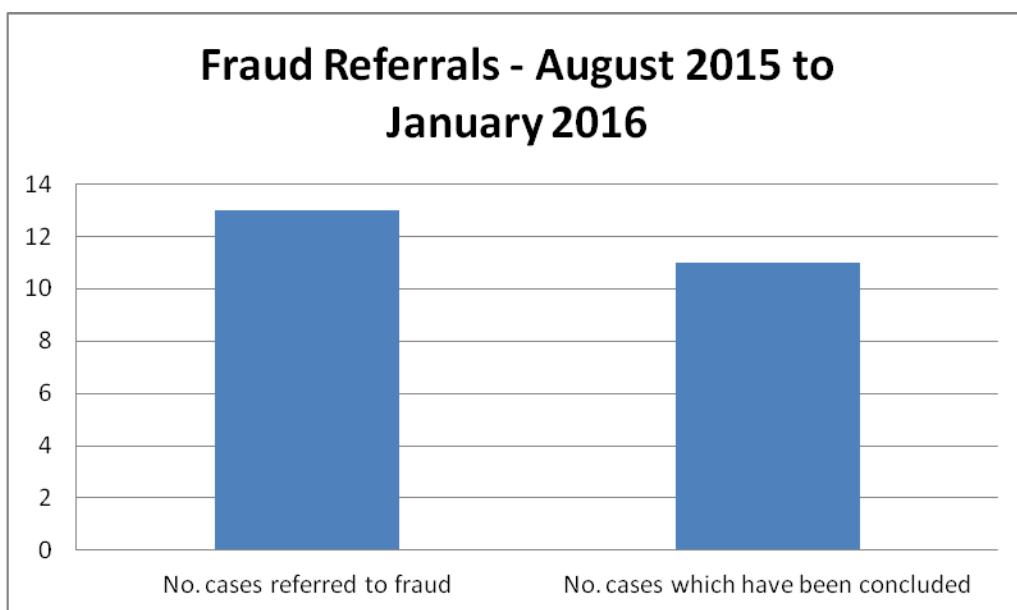
5.4 Since August 2015, an average of 6 cases are being transferred for resettlement each month and an average of 10 cases are being resettled or having support withdrawn following a refusal. A total of 61 cases are awaiting resettlement as at 31<sup>st</sup> January 2016. It is anticipated that the number of cases awaiting resettlement may increase due to the difficulties in procuring a satisfactory number of properties for resettlement.



5.5 A total of 34 properties have been procured for the purpose of resettling NRPF cases between August 2015 and January 2016. The procurement of affordable properties in the local area represents a significant and ongoing challenge and impacts on the ability of the service to resettle large numbers of those who are eligible. During this period, 23 properties have been procured in Lewisham and a further 11 outside the borough. An additional 27 families were supported by the resettlement team to find their own suitable accommodation



5.6 13 cases have been referred for fraud investigation between August 2015 and January 2016 and 11 fraud investigations were completed in the same period. Only certain types of cases are referred to the special investigations team. This will usually involve complex cases, those potentially involving significant sums of money or requiring a level of investigation incompatible with the role of the NRPF team. Lewisham successfully bid for money from the DCLG to develop counter-fraud initiatives across the boroughs of Lewisham, Southwark, Greenwich, Lambeth and Bromley in relation to NRPF. Up to January 2016 Lewisham has identified 57 cases relating to failure to disclose and 18 cases involving misrepresentation. Across the boroughs a total of 164 cases have been identified, resulting in savings of £6.2 million.



## Case studies

- 5.7 Family A were accepted as a case by Children's services in May 2014 and were placed into Bed & Breakfast accommodation at a cost of £2,578 per month. The case was transferred to the pilot project in July 2014 and following active case management by the pilot team, the no recourse restrictions were lifted in October 2014. The family were referred to the resettlement process to make claims for DWP benefits and to seek long-term accommodation in the private sector, but were unable to find affordable accommodation in Lewisham or the surrounding area that was at or below the LHA rate. Suitable accommodation which was affordable and close to two outstanding rated schools was sourced for the family in Birmingham. Following the offer of this accommodation, the family's representatives sent a letter arguing against such a move. The NRPF team advised that the move was necessary to ensure a positive, long-term and stable environment for the family, allowing them to rent a 2 bedroom house with a garden at rates below the LHA rather than the most suitable accommodation that could be located locally at that time, which was a one bed flat with no garden with rental costs significantly over the LHA. The family agreed to move in the spring of 2015, and were supported in accessing local services and finding local schools. Follow-up contact with the family has shown them to be very happy with the move and the support they received, and as of October 2015 the family have agreed to act as ambassadors for the service where other NRPF cases are identified as suitable for a move out of the borough.
- 5.8 Applicant B applied for support on 27<sup>th</sup> November 2015 having presented as destitute with a young child, no partner and no income. A supporting letter which the applicant brought was from a friend whom she claimed to be living with and stated that she had to vacate the property by 30<sup>th</sup> November. The applicant claimed to have been living in the UK since 2003 and was in the process of applying for a new Nigerian passport having misplaced her previous one. The applicant was unable to advise the caseworker of the cost of the application or how it was being financed. Following checks with the Home Office by the embedded Home Office caseworker it was established that the applicant had never applied to enter or stay in the UK and as such was an illegal entrant unable to demonstrate that she had been in the UK since 2003. Checks with the Nigerian embassy further established that without any identification documents it would not be possible for a replacement passport to be issued. Further investigation from the caseworkers using social media indicated that the applicant did not have a young child in the UK, that they might be married, that they were in employment and that they were in sole possession of a property. The decision was taken to not provide urgent temporary accommodation on 30<sup>th</sup> November. This was challenged by the representatives of the applicant and a further investigatory meeting was arranged for 1<sup>st</sup> December, however the applicant failed to attend once the above evidence was provided.

## **6 Future pressures**

- 6.1 As of 1 February, the government introduced 'right to rent' regulations which require landlords to carry out checks on the immigration status of potential tenants. This may disrupt the living arrangements of many migrants who do not have status, or do not have adequate documentation. This is likely to lead to an increased demand for NRPF services from families no longer able to access private rental accommodation. During the pilot of this scheme in West Midlands, an increase in workload for NRPF services was reported anecdotally by local authority representatives interviewed as part of the Home Office evaluation
- 6.2 There have been significant changes in national policy recently which will make the operating environment more challenging. The housing supply shortage across London and the changes in the housing market with increasing private sector rents and landlords withdrawing from the market for housing benefit claimants, is making it more and more difficult to procure affordable accommodation in the borough.
- 6.3 DWP figures suggest that London has approximately 177,000 of the 397,000 non-UK national benefit claimants (45% of the total). If the proportion of EEA nationals is the same as non-UK nationals as a whole, then the financial burden for the 32 London local authorities would be between £101m and £169m per annum. This is equivalent to between £3.2m and £5.3m per local authority per annum. It should be noted that it is likely that costs would be at the upper end of the range because of higher accommodation costs in London.

## **7 Financial Implications**

- 7.1 The council has a legal and fiduciary duty to set and maintain a balanced budget each year and must manage the budget accordingly to achieve this. Following the Mayor & Cabinet report in May 2015, NRPF expenditure for 2015/2016 was projected to be £4.3 million unadjusted. The current projection is for total expenditure to be £4.7 million in this financial year
- 7.2 This increase is accounted for in part by the cost of the resettlement programme, consisting of rent deposits and rent in advance, for those being transitioned away from local authority support into the private sector. This cost was not part of the original expenditure forecast. As of January 2016 the cost of resettlement has been £217,000 and it is expected that the full year figure will be £260,000.
- 7.3 Increased expenditure has also occurred due to delays in resolving the status of NRPF applicants which is leading to an average of 3 months of extra support being required per case.
- 7.4 The lack of suitable accommodation once an applicant is eligible for Housing Benefit has also led to an average increase of eight weeks in the length of time for which an applicant is supported.

7.5 The average cost of supporting a family case with subsistence and accommodation is £2,050 per month, the majority of which is the cost of accommodation.

7.6 A budget of £4.4m has been agreed for the service in 2016/17.

## 8 Legal Implications

Prior to the implementation of part 1 of the Care Act 2014, those subject to immigration control within the meaning of section 115 of the Immigration and Asylum Act 1999 (which includes those who are not a national of an EEA State: (i) with no leave to enter or remain but require it, (ii) a no recourse to public funds condition; and (iii) whose leave is subject to a maintenance undertaking) were entitled to assistance pursuant to section 21(1) of the NAA only where their need was to a material extent made more acute by some circumstance other than the mere lack of accommodation or funds (known as the “destitute plus” test). In assessing this, a local authority was not allowed to take into account Home Office support for asylum seekers. This is as a result of Section 21(1A) of the NAA 1948 which provided: ‘A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely—(a) because he is destitute; or (b) because of the physical effects, or anticipated physical effects, of his being destitute.

Those subject to immigration control within the meaning of section 115 of the IAA 1999 are now excluded from care and support under the Care Act. This is as a result of section 21(1) which provides, ‘A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (exclusion from benefits) applies and whose needs for care and support have arisen solely- (a) because the adult is destitute, or (b) because of the physical effects, or anticipated physical effects, of being destitute.’

Other legal frameworks applicable to this work are outlined in the report.

### Equalities Legislation

8.1 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

8.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected

characteristic and those who do not.

- foster good relations between people who share a protected characteristic and those who do not.

- 8.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. The Mayor should pay careful attention to the EAA.
- 8.4 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:  
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-actcodes-of-practice-and-technical-guidance/>
- 8.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
  2. Meeting the equality duty in policy and decision-making
  3. Engagement and the equality duty
  4. Equality objectives and the equality duty
  5. Equality information and the equality duty
- 8.6 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:  
<http://www.equalityhumanrights.com/advice-and-guidance/public-ectorequality-duty/guidance-on-the-equality-duty/>